

April 6 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Kathryn S. Syth  
LaRANCE & SYTH, P.C.  
303 N. Broadway, Ste 600  
P.O. Box 1456  
Billings, MT 59103-1456  
406-259-1054  
Attorneys for Appellee

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
**Case No. DA10-0022**

JAMES M. WALTERS and )  
DIANE M. WALTERS )  
 )  
Plaintiffs/Appellees, )  
 )  
and )  
 )  
LARRY LULOFF and )  
JANET PERKINS LULOFF, )  
 )  
Defendants/Appellants. )  
\_\_\_\_\_ )

**FILED**  
APR 06 2010  
*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

---

**APPELLEES' COMBINED OBJECTION TO APPELLANTS' REQUEST  
FOR ADDITIONAL TIME TO FILE APPELLANTS' OPENING BRIEF and  
MOTION TO DISMISS APPEAL**

---

***OBJECTION FOR EXTENSION OF TIME***

Comes now, the Appellees, James M. Walters and Diane M. Walters, by and  
through their attorney of record, and object to Appellant's request for an extension

of time in order to file Appellants' opening brief.

Appellees' objection is based on the following:

1. Appellants' Larry Luloff and Janet Perkins Luloff, failed to contact the undersigned regarding a motion for extension of time to file their opening brief pursuant to M.R. App. P. 26.
2. Appellants' have filed several appeals on decisions issued by the Honorable Blair Jones in this matter (Twenty-Second Judicial District Court, Carbon County, Montana, DV03-57) in order to frustrate the process, cause additional expense to Appellees and delay the satisfaction of the judgment entered against Appellants in favor of Appellees.
3. The Clerk of the Supreme Court issued its Notice of Filing dated February 23, 2010, clearly setting forth that Appellants' opening brief was due within 30 days from February 23, 2010.
4. Appellants' opening brief was due on or about March 25, 2010.
5. The request for extension of time made by Appellants' was not requested until after the due date of Appellants' opening brief.
6. Appellants' reason for the extension of time is based on their assumption that the court records provided to the Supreme Court are

incomplete. Appellants' claim that the actual discovery answers are missing from the information provided to the Supreme Court. Actual discovery answers are not filed with the Court. When discovery answers are sent to opposing counsel, the only document filed with the Clerk of Court is a Notice of Service of Discovery Answers by the party providing the answers. More importantly, Appellants' are referring to documents that are irrelevant to the issue of the attorney fees which are the subject of the current appeal. There has been no discovery conducted in this matter since this Court affirmed the underlying judgment in this matter *Walters v. Luloff*, 2008 MT 17, on January 28, 2008.

7. Appellants' inability to understand the rules of procedure should not be condoned. Appellants' actions are a deliberate attempt to delay the process to the detriment of Appellees. The request for several weeks to compile old records, which cannot be considered on appeal, should be denied, and this appeal should be dismissed for the reasons as set forth below.

### ***MOTION TO DISMISS***

COMES NOW, Appellees, by and through their attorney of record, and respectfully requests that the Supreme Court issue an order dismissing Appellants'

appeal in this matter.

Montana Rule of Appellate Procedure 13(c) provides that if an appellant fails to file a brief within the time provided within this rule, appellee may move for dismissal. Appellants' opening brief was due on March 25, 2010. Appellants' failed to file their opening brief within the allotted time frame and did not request for an extension of time within the requirements of the rules of Supreme Court procedure. Appellants' failed to contact the undersigned at all, and did not request an extension of time in order to file their opening brief until *after* their opening brief was already due.

Further, this Court has affirmed the underlying judgment in this matter *Walters v. Luloff*, 2008 MT 17 on January 28, 2008. The remaining issue of attorneys fees was remanded and subsequently awarded again to the Appellees by the District Court, which are the subject of this appeal. Appellants at the hearing on the amount of attorneys fees attempted to argue the underlying judgment again. Appellants claims that there were discovery issues early on in this matter are irrelevant and cannot be raised again. Those claims, if any, should have been raised in the initial appeal, and are now barred by res judicata. The doctrine of res judicata bars the relitigation of a claim once a final judgment has been entered. *Holtman v. 4-G's Plumbing and Heating, Inc.* (1994), 264 Mont. 432, 872 P.2d 318. Finality is accorded to the disposition of all issues that were raised or that

could have been raised; a party, therefore, is prohibited from relitigating a claim that he or she has already had an opportunity to litigate. *Traders State Bank v. Mann* (1993), 258 Mont. 226, 238, 852 P.2d 604, 611. T *Federated Mut. Ins. Co. v. Anderson*, 1999 MT 288, ¶ 58, 297 Mont. 33, ¶ 58, 991 P.2d 915, ¶ 58.

Appellees' respectfully request that the Supreme Court issue its order *dismissing* the above appeal.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of April, 2010.

LaRANCE & SYTH, P.C.

BY:

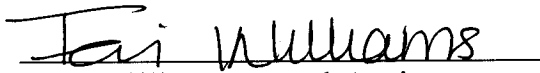
  
KATHRYN S. SYTH  
Attorney for Appellees

### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was mailed, postage prepaid, upon the following on the 5 day of April, 2010:

Ed Smith - Clerk of Supreme Court  
215 North Sanders, Room 323  
PO Box 203003  
Helena, Montana 59620

LARRY LULOFF  
JANET PERKINS LULOFF  
*Pro Se Litigants*  
208 Stormitt Butte Road  
Roberts, MT 59070

  
Teri Williams, Legal Assistant to  
Kathryn S. Syth